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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,594	09/05/2001	Phillip M. Ginsberg	01-1047	1177
63710	7590	05/12/2008	EXAMINER	
DEAN P. ALDERUCCI			GREENE, DANIEL LAWSON	
CANTOR FITZGERALD, L.P.				
110 EAST 59TH STREET (6TH FLOOR)			ART UNIT	PAPER NUMBER
NEW YORK, NY 10022			3694	
			MAIL DATE	DELIVERY MODE
			05/12/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

1. The reply filed on 9/21/2007 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

**Applicant has failed to respond to each and every contention set forth in the previous Office action mailed 8/15/2007. Specifically, Applicant has failed to respond to at least sections 7-9 of said action.**

**Regardless of whether or not applicant is of the opinion that the previous Office actions are withdrawn, per MPEP section 2266 [R-3] and 37 CFR 1.111 (reproduced below for applicant's convenience) applicant is REQUIRED to respond to each and every contention raised by the Examiner.**

**Accordingly, Applicant is being given 30 days to respond to each and every contention raised by the Examiner in said 8/15/2007 Office action before prosecution of the application can continue.**

**MPEP 2266 [R-3] Responses,**

*37 CFR 1.111. Reply by applicant or patent owner to a non-final Office action.*

(b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the

reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section."

**1a. Applicant argues:**

1. The August 15, 2007 Office Action asserts there is a "serious search burden." MPEP § 803(I)(B), § 803(II) ¶ 4, and § 806.01 requires "Examiners must provide reasons and/or examples to support conclusions" of "unduly extensive and burdensome search," for example, by "appropriate explanation of separate classification, or separate status in the art, or a different field of search." The statements in the August 15 Office Action and prior Office Actions do not provide appropriate explanations to the grounds stated in MPEP § 803(II) ¶ 4. Applicant is unable to reply until the Office Action has stated "reasons and/or examples to support conclusions" that relate to relevant criteria. How do the various dependent claims that the Office Action refers to as separate species require different search queries or otherwise produce an unduly extensive and burdensome search? Applicants can not reply without such evidence presented."

**1a. Response:**

See page 3, section d. of said 8/15/07 Office action.

**1b. Applicant argues:**

"2. MPEP § 808.02 states that "where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions." Accordingly, since there has been no evidence presented that there is a required different field of search, and all of the claims fall within art class 705 and subclass 037, no election requirement can exist in accordance with the MPEP."

**1b. Response:**

See page 3, sections d., e. and f. of said 8/15/07 Office action

**1c. Applicant argues:**

3. A requirement under 37 C.F.R. § 1.146 permits an applicant to elect a "reasonable" number of species. What is a "reasonable" number, in view of the filing fees paid, and what published document articulates a

standard?~ The Board has held that Applicants are free to decide on a number of claims as long as the fees for those claims are paid.

**1c. Response:**

See page 3, section e. of said previous Office action as well as 35

U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**1d. Applicant argues:**

4. MPEP § 806.04(f) permits a requirement to elect only "if the species are mutually exclusive." The January 2007 Office paper conceded in ¶ 5 that the claims do overlap in scope. How does § 806.04(f) apply in such a situation? If the Examiner believes that election among non-mutually-exclusive "inventions" of overlapping scope is authorized by the MPEP, Applicant requests identification of the particular MPEP section that overrides § 806.04(f).

**1d. Response:**

Applicant is directed to 37 CFR § 1.146 Election of species.,

"In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.[43 FR 20465, May 11, 1978; revised, 62 FR 53131, Oct. 10, 1997, effective Dec.1, 1997"

to show support for requiring and sustaining the requirement for restriction.

2. See 37 CFR 1.111.

3. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. GREENE whose telephone number is (571)272-6876. The examiner can normally be reached on Mon-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel L Greene Jr./  
Examiner, Art Unit 3694  
2008-05-08

/James P Trammell/  
Supervisory Patent Examiner, Art Unit 3694